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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

S.T.C.No. 24 of 1991

Date of decision:14.2.2007

Food Corporation of India, Jalandhar **...Petitioner**

Versus

The State of Punjab **...Respondent**

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.K.L.Goyal, Advoccate for the petitioner.
Ms.Urvashi Dhugga, Assistant Advocate General,Punjab
for respondent.

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RAJESH BINDAL, J.

The dealer has approached this Court by filing the present petition under Section 22 (2) of the Punjab General Sales Tax Act, 1948 (for short 'the Act') seeking a direction to the Sales Tax Tribunal(for short 'the Tribunal) to refer the following questions of law, for opinion of this Court arising out of order dated March 10, 1990 passed by the Tribunal in Appeal No.89 of 1984-85 for the assessment year 1975-76 :-

"a) Whether in the facts and circumstances of the case the AETC was vested with jurisdiction to frame the impugned assessment in view of 51-STC-22?

b) Whether in the facts and circumstances of the case, the rate of tax imposed under Section 4-B should have been levied @ 3% or not?

c) Whether in the facts and circumstances of the case, the wheat procured under levy order could be taxed in view of 38-STC-144 and 66-STC-7?

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d) Whether in the facts and circumstances of the case, the incidental charges like dammi, Market Fee could be included in the Purchase turnover?

e) Whether in the facts and circumstances of the case, tax could be imposed on bardana used as packing material for the transfer of wheat and rice, procured under levy orders, wherein no sale was involved?"

Briefly the facts of the case are that the petitioner, which is a statutory body corporate under Food Corporation of India Act, 1964, is engaged in the business of procurement, supply and distribution of food grains. As pleaded in the petition, for the assessment year 1975-76, the petitioner filed its return and deposited the tax in terms thereof. While framing the assessment, the Assessing Authority vide order dated March 24, 1983 created an additional demand of Rs. 84,07,905-22 Paise under the provisions of the Act. In appeal, the order passed by the Assessing Authority was upheld by Deputy Excise and Taxation commissioner (Appeals) vide order dated March 5, 1984. The same was further upheld in appeal by the Tribunal vide order dated March 10,1990.

We have heard learned counsel for the parties and with their assistance have perused the order passed by the Tribunal.

As far as question at Sr. No.(a) is concerned, the Tribunal has categorically held that the Assistant Excise and Taxation Commissioner, who had framed the assessment, did have the jurisdiction to deal with the case of the petitioner. Rule 39 of the Punjab General Sales Tax Rules, 1949 is quite clear on that issue and counsel for the petitioner at the time of hearing could not point out any legal infirmity in the findings recorded by the Tribunal on the issue of jurisdiction. Accordingly, we do not find any substance in the question of law sought to be raised.

As far as question at Sr. No.(b) is concerned, learned counsel for the petitioner could not dispute that from the material on record the dealer was not able to satisfy the authorities that to avail concessional rate of tax under the notification the pre-requisites were complied with by the

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dealer. Having not done that, in our view, the Tribunal was right in holding that dealer was not entitled to concessional rate of tax as per notification relied upon.

As far as questions c, d & e are concerned, from a perusal of the order of the Tribunal, learned counsel for the petitioner could not point out as to how these questions arise out of the order of the Tribunal. It cannot possibly be disputed that to seek reference of question of law, the same has to arise out of the order of the Tribunal. Issues having not been raised before the Tribunal, the assessee cannot be permitted to raise the same in the present proceedings.

In view of our above discussions, we do not find any merit in the petition and accordingly the same is dismissed.

(Rajesh Bindal)
Judge

February 14, 2007 **(M.M.Kumar)**
Pka **Judge**